

EXHIBIT 10

From: Bondi, Bradley J.
To: avakians@SEC.GOV; peikinst@SEC.GOV; Buchholz@sec.gov
Cc: Bondi, Bradley J.; Steven M. Farina
Subject: Tesla
Date: Sunday, September 23, 2018 9:05:10 PM
Attachments: Complaint - Redline.docx
[ATT00001.htm](#)
[Tesla Consent - Redline.docx](#)
[ATT00002.htm](#)
[Tesla Final Judgment - Redline.docx](#)
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[ATT00005.htm](#)

Confidential Treatment Requested Under FOIA

Confidential Settlement Communication Subject to FRE 408

Stephanie, Steve, and Steve:

Attached please find redlines of the draft settlement documents for the company and Mr. Musk. For your convenience, we will send to you clean copies of these documents later this evening.

We would appreciate the opportunity to speak with you tomorrow morning or later, at your convenience, to explain our thinking on the revisions. Please let us know what time(s) would work best for you.

Best regards,

Brad Bondi

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Case No. [REDACTED]

Plaintiff,

v.

ELON MUSK,
TESLA, INC.

Defendants.

**CONSENT OF DEFENDANT
ELON MUSK**

1. Defendant Elon Musk (“Defendant”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 13 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the “Final Judgment”) and incorporated by reference herein, which, among other things:

- 1 (a) permanently restrains and enjoins Defendant from violation of Section 10(b) of
 2 the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)]
 3 and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
 4 (b) orders Defendant to pay a civil penalty in the amount of \$10,000,000 under
 5 Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and
 6 (c) requires Defendant to comply with the undertaking set forth in this Consent and
 7 incorporated in the Final Judgment.

8 3. Defendant acknowledges that the civil penalty paid pursuant to the Final Judgment may
 9 be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of
 10 2002, as amended. Regardless of whether any such Fair Fund distribution is made, the civil penalty
 11 shall be treated as a penalty paid to the government for all purposes, including all tax purposes. To
 12 preserve the deterrent effect of the civil penalty, Defendant agrees that he shall not, ~~after offset or~~
 13 ~~reduction of any award of compensatory damages in any Related Investor Action based on Defendant's~~
 14 ~~payment of disgorgement in this action,~~ argue that he is entitled to, nor shall he further benefit by, offset
 15 or reduction of ~~such~~any award of compensatory damages ~~award~~in any Related Investor Action by the
 16 amount of any part of Defendant's payment of a civil penalty in this action (“Penalty Offset”). If the
 17 court in any Related Investor Action grants such a Penalty Offset, Defendant agrees that he shall,
 18 within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel
 19 in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund,
 20 as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall
 21 not be deemed to change the amount of the civil penalty imposed in this action. For purposes of this
 22 paragraph, a “Related Investor Action” means a private damages action brought against Defendant by
 23 or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint
 24 in this action.

25 4. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement
 26 or indemnification from any source, including but not limited to payment made pursuant to any
 27 insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final
 28 Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution

1 fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim,
 2 assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any
 3 penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such
 4 penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of
 5 investors.

6 5. Defendant undertakes to:

- 7 (a) resign from his role as Chairman of the Board of Directors of Tesla, Inc.
 ("Chairman") ~~within fifteen (15) days of the filing of this Consent~~no later than
 February 28, 2019 and agree not to seek reelection or to accept an appointment
 as Chairman for a period of two years thereafter;
- 11 (b) comply with all mandatory procedures implemented by Tesla, Inc. (the
 "Company") regarding the oversight ~~and approval of all~~ of his public statements
 relating to the Company made in any format, including, but not limited to, posts
 on social media (*e.g.*, Twitter), the Company's website (*e.g.*, the Company's
 blog), press releases, and investor calls; and
- 16 (c) certify, in writing, compliance with undertaking (a) set forth above. The
 certification shall identify the undertaking, provide written evidence of
 compliance in the form of a narrative, and be supported by exhibits sufficient to
 demonstrate compliance. The Commission staff may make reasonable requests
 for further evidence of compliance, and Defendant agrees to provide such
 evidence. Defendant shall submit the certification and supporting material to
 Steven Buchholz, Assistant Regional Director, U.S. Securities and Exchange
 Commission, 44 Montgomery Street, 28th Floor, San Francisco, CA 94104,
 with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F
 Street NE, Washington, DC 20549, no later than fourteen (14) days from the
 date of the completion of the undertaking.

27 6. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule
 28 52 of the Federal Rules of Civil Procedure.

1 7. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the
 2 Final Judgment.

3 8. Defendant enters into this Consent voluntarily and represents that no threats, offers,
 4 promises, or inducements of any kind have been made by the Commission or any member, officer,
 5 employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

6 9. Defendant agrees that this Consent shall be incorporated into the Final Judgment with
 7 the same force and effect as if fully set forth therein.

8 10. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any
 9 exists, ~~that he fails to comply~~of lack of compliance with Rule 65(d) of the Federal Rules of Civil
 10 Procedure, and hereby waives any objection based thereon.

11 11. Defendant waives service of the Final Judgment and agrees that entry of the Final
 12 Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its
 13 terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty
 14 days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating
 15 that Defendant has received and read a copy of the Final Judgment.

16 12. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted or
 17 that could have been asserted against Defendant in this civil proceeding. Defendant acknowledges
 18 that no promise or representation has been made by the Commission or any member, officer, employee,
 19 agent, or representative of the Commission with regard to any criminal liability that may have arisen or
 20 may arise from the facts underlying this action or immunity from any such criminal liability.

21 Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding,
 22 including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that
 23 the Court's entry of a permanent injunction may have collateral consequences under federal or state
 24 law and the rules and regulations of self-regulatory organizations, licensing boards, and other
 25 regulatory organizations. Such collateral consequences include, but are not limited to, a statutory
 26 disqualification with respect to membership or participation in, or association with a member of, a
 27 self-regulatory organization. This statutory disqualification has consequences that are separate from
 28 any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding

1 before the Commission based on the entry of the injunction in this action, Defendant understands that
 2 he shall not be permitted to contest the factual allegations of the complaint in this action.

3 13. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e),
 4 which provides in part that it is the Commission's policy "not to permit a defendant or respondent to
 5 consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or
 6 order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the
 7 defendant or respondent states that he neither admits nor denies the allegations." As part of
 8 Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any
 9 action or make or permit to be made any public statement denying, directly or indirectly, any allegation
 10 in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make
 11 or permit to be made any public statement to the effect that Defendant does not admit the allegations of
 12 the complaint, or that this Consent contains no admission of the allegations, without also stating that
 13 Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby
 14 withdraws any papers filed in this action to the extent that they deny any allegation in the complaint;
 15 and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the
 16 Bankruptcy Code [11 U.S.C. § 523] ~~that the allegations in the complaint are true, and further,~~ that any
 17 debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the
 18 Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in
 19 connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws
 20 or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy
 21 Code [11 U.S.C. § 523(a)(19)]. If Defendant breaches this agreement, the Commission may petition
 22 the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this
 23 paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual
 24 positions in litigation or other legal proceedings in which the Commission is not a party. Nothing in
 25 this Agreement is intended to have preclusive effect in any other proceeding in which the Commission
 26 is not a party.

27 14. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small
 28 Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the

1 United States, or any agency, or any official of the United States acting in his or her official capacity,
2 directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by
3 Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not
4 the prevailing party in this action since the parties have reached a good faith settlement.

5 15. Defendant agrees that the Commission may present the Final Judgment to the Court for
6 signature and entry without further notice.

7 16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose
8 of enforcing the terms of the Final Judgment.

9
10 Dated: September __, 2018

11 Elon Musk

12 On _____, 2018, _____, a person known to me, personally
13 appeared before me and acknowledged executing the foregoing Consent.

14
15 _____
16 Notary Public
Commission expires:

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18 Approved as to form:
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21 Steve Steven M. Farina
22 Williams & Connolly LLP
23 725 Twelfth Street N.W.
24 Washington, DC 20005
25 Attorney for Defendant
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